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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF:
EPAC Superfund Site
Waterbury, Connecticut

Waterbury Realty, LLC

Respondent

ADMINISTRATIVE ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA Region 1
CERCLA Docket No. 01-2003-0060

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C.
§§ 9604, 9606(a), 9607 and 9622



TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	3
II.	PARTIES BOUND	3
III.	DEFINITIONS	4
IV.	FINDINGS OF FACT	6
V.	CONCLUSIONS OF LAW AND DETERMINATIONS	7
VI.	ORDER	8
VII.	DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR	8
VIII.	WORK TO BE PERFORMED	9
IX.	SITE ACCESS	13
X.	ACCESS TO INFORMATION	14
XI.	RECORD RETENTION	14
XII.	COMPLIANCE WITH OTHER LAWS	15
XIII.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES	16
XIV.	AUTHORITY OF ON-SCENE COORDINATOR	16
XV.	DISPUTE RESOLUTION	19
XVI.	FORCE MAJEURE	19
XVII.	STIPULATED PENALTIES	20
XVIII.	COVENANT NOT TO SUE BY EPA	22
XIX.	RESERVATIONS OF RIGHTS BY EPA	23
XX.	COVENANT NOT TO SUE BY RESPONDENT	24
XXI.	OTHER CLAIMS	26
XXII.	CONTRIBUTION PROTECTION	26
XXIII.	INDEMNIFICATION	26
XXIV.	INSURANCE	27
XXV.	FINANCIAL ASSURANCE	28
XXVI.	MODIFICATIONS	29
XXVII.	ADDITIONAL REMOVAL ACTIONS	29
XXVIII.	NOTICE OF COMPLETION OF WORK	30
XXIX.	SEVERABILITY/INTEGRATION/APPENDICES	31
XXX.	EFFECTIVE DATE	31

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Waterbury Realty, LLC ("Respondent"), a Connecticut limited liability company. This Order provides for the performance of a removal action by Respondent at or in connection with the EPAC Superfund Site located in Waterbury, Connecticut.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

3. EPA has notified the State of Connecticut (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and the Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by the Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Order. The Respondent agrees to comply with and be bound by the terms of this Order and further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA and upon the Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

6. The Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. The Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on July 15, 2003, by the Director, Office of Site Remediation and Restoration, or his/her delegate, and all attachments thereto. The "Action Memorandum" is attached as Appendix A.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Order as provided in Section XXX.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "CT DEP" shall mean the Connecticut Department of Environmental Protection and any successor departments or agencies of the State.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. "Order" shall mean this Administrative Order on Consent and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Order and any appendix, this Order shall control.

j. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

k. "Parties" shall mean EPA and Respondent.

l. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

m. "Respondent" shall mean Waterbury Realty, LLC.

- n. "Section" shall mean a portion of this Order identified by a Roman numeral.
- o. "Site" shall mean the EPAC Superfund Site, located within an 11 acre industrial park at 730 North Main Street in Waterbury, New Haven County, Connecticut, and depicted generally on the map attached as Appendix B.
- p. "State" shall mean the State of Connecticut.
- q. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action, as set forth in Appendix C to this Order, and any modifications made thereto in accordance with this Order.
- r. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under CT DEP regulations.
- s. "Work" shall mean all activities Respondent is required to perform under this Order.

IV. FINDINGS OF FACT

8. The EPAC Superfund Site is located within an 11 acre industrial park located at 730 North Main Street, in Waterbury, Connecticut. The Site is bounded by commercial properties to the north, residential properties and the Naugatuck River to the east, residential properties to the south, and a residential neighborhood and Martin Luther King, Jr. Park to the the west. The Great Brook flows through the Site.

9. The Site is located within the Great Brook Industrial Park ("Industrial Park"), which is owned by Waterbury Realty, LLC. The Industrial Park is a multi-section, light manufacturing, industrial-use brick complex located on 11 acres. EPAC, a tenant, operated a metal finishing business within a portion of the building located in the Industrial Park until 25 December 2002, at which time a fire destroyed a portion of the building.

10. On 2 March 2003, an emergency response was conducted by the Connecticut Department of Environmental Protection (CT DEP) in response to an odor and sheen that were observed on the Great Brook. The EPAC facility was investigated as the possible source of the sheen. At CT DEP's request, EPA mobilized to the Site on 3 March 2003 to assist with this emergency response. During this response, several conditions were observed that posed a potential threat to public health. Fire debris was suspected to include asbestos-containing material (ACM) and several capacitors and large capacity transformers potentially containing

polychlorinated biphenyls (PCBs) were found. Stained soils located at the base of the transformers indicated past occurrence of leakage.

11. On 3 March 2003, CT DEP requested the assistance of EPA to conduct a removal site investigation. EPA and the Superfund Technical Assessment and Response Team contractor (START) mobilized to the Site on 20 March 2003 to conduct the site investigation. During the investigation, START collected bulk samples (for asbestos) from a boiler unit located in the ruins of the fire and at exterior portions of the Site in the vicinity of the fire debris. Air monitoring was conducted near several drums and indicated elevated levels of organic vapors, however, the drums could not be safely accessed due to fire debris. Although the transformers could not safely be opened during the investigation, stained surface soils beneath the transformers were sampled.

12. Data collected during the site investigation shows the presence of asbestos in concentrations up to 12 % on the boiler unit and nearby building debris and PCBs up to 54 mg/kg in stained surface soils beneath the transformers.

13. The capacitors and transformers are located in an adjacent two-story section of building still standing, but damaged and open to the burned-out remains on one side. This two-story section was vacant and not leased to EPAC.

14. Based on the findings of the site investigation, a removal action was recommended on 21 April 2003. EPA issued an action memorandum on July 15, 2003.

15. The burned-out remains of the former EPAC facility are still present. The friable asbestos, drums, capacitors, and transformers remain, although representatives of the Industrial Park have covered the asbestos with plastic tarps to minimize its release. The drums remain commingled with building debris. Access to the site remains unrestricted.

16. The presence of friable asbestos, PCBs, and drums containing potential hazardous substances pose a direct contact threat to local residents and those who may enter the Site. Access to the Site is unrestricted, and the burned-out remains of the structure may act as an attractive nuisance, bringing unauthorized individuals in close contact with asbestos-containing building materials, drums, or PCB-contaminated surface soils.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

17. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The EPAC Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent is the "owner" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The conditions described in Paragraphs 10-16 the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. ORDER

18. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

19. The Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualification(s) of such contractor(s) **within ten (10) days** of the Effective Date of this Order. The Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least **fourteen (14) days** prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors or subcontractors retained by the Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name and qualifications **within seven (7) days** of EPA's disapproval. The proposed contractor or subcontractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's or sub-contractor's Quality Management Plan ("QMP"). The QMP should be

prepared in accordance with "EPA Requirements for Quality Management Plans (EPA QA/R-2)" (EPA/240/B-01/002), or equivalent documentation as required by EPA.

20. Within ten (10) days after the Effective Date, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, the Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval. Receipt by the Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by the Respondent.

21. EPA has designated Leslie Sims of the Emergency Planning and Response Branch, Region 1, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the OSC at the U.S. Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100, Mail Code HBR, Boston, MA 02114-2023, (617) 918-1235, by overnight delivery.

22. EPA and the Respondent shall have the right, subject to Paragraph 20, to change their respective designated OSC or Project Coordinator. The Respondent shall notify EPA seven (7) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

23. Respondent shall perform, at a minimum, all actions necessary to implement the Statement of Work (attached as Appendix C of this Order). The work required under this Order includes addressing the cleanup of hazardous substances present at the Site including, but not limited to, friable asbestos and ACM, PCBs, and PCB-contaminated soils. In addition, the work required under this Order includes addressing drums and containers that may contain hazardous substances which are commingled with building debris and could not be safely accessed during the removal site investigation.

24. Work Plan and Implementation.

a. Within thirty (30) days after the Effective Date, Respondent shall submit to EPA for approval a draft Work Plan, as identified in the SOW, for performing the removal action generally described in Paragraph 23 above. The Work Plan shall contain a schedule showing completion of the work (other than post-removal Site control) by no later than November 30, 2003.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, the Respondent shall submit a revised draft Work Plan within seven (7) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

c. The Respondent shall not commence any Work except in conformance with the terms of this Order. The Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 24(b).

25. Health and Safety Plan. Within thirty (30) days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. The Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

26. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval and guidance regarding sampling, analytical and quality assurance/quality control ("QA/QC") activities, assessments, data validation, and chain of custody procedures. In accordance with "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), the Respondent will develop a Generic QA Project Plan and site-specific sampling and analysis plans (SAPs). The Respondent shall ensure that laboratories used to perform site analyses will operate under QA/QC programs documented in Laboratory QA Plans and will conduct analyses in accordance with standard operating procedures that comply with appropriate EPA guidance and methodologies. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the QA/QC requirements.

b. Upon request by EPA, the Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. The Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, the Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. The Respondent shall notify EPA not less than three (3) days in advance of any sample collection activity, unless shorter notice is agreed to

by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

27. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, the Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(I) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, the Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

28. Reporting.

a. The Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every 30th day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit two (2) copies of all plans, reports or other submissions required by this Order, the Statement of Work, or any approved work plan. Upon request by EPA, the Respondent shall submit such documents in electronic form.

c. The Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. The Respondent also agrees to require that its successors comply with the immediately proceeding sentence and Sections IX (Site Access) and X (Access to Information).

29. Final Report. Within fifteen (15) days after completion of all Work (other than post-removal Site control) required by this Order, the Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

30. Off-Site Shipments.

a. The Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. The Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. The Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by the Respondent following the award of the contract for the removal action. The Respondent shall provide the information required by Paragraph 30(a) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, the Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. The Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

31. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by any of the Respondents, such Respondent shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.

32. Where any action under this Order is to be performed in areas owned by or in possession of someone other than the Respondent, the Respondent shall use its best efforts to obtain all necessary access agreements within ten (10) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. The Respondent shall describe in writing its efforts to obtain access. EPA may then assist in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate.

33. Notwithstanding any provision of this Order, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

34. Respondent shall provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. The Respondent shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

35. The Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the State under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified the Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

36. The Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA and the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

37. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

38. Until 10 years after the Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), the Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), the Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

39. At the conclusion of this document retention period, the Respondent shall notify EPA and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or the State, the Respondent shall deliver any such records or documents to EPA or the State. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege, it shall provide EPA or the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by the Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

40. The Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

41. The Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order

shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. The Respondent shall identify ARARs in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

42. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Respondent shall immediately take all appropriate action. The Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. The Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the National Response Center at (800) 424-8802 and/or the EPA Regional Duty Officer at (617) 723-8928. In the event that the Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA may seek all costs of the response action not inconsistent with the NCP in a subsequent action.

43. In addition, in the event of any release of a hazardous substance from the Site, the Respondent shall immediately notify the OSC and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

44. The OSC shall be responsible for overseeing the Respondent's implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. DISPUTE RESOLUTION

45. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

46. If the Respondent object to any EPA action taken pursuant to this Order, it shall notify EPA in writing of its objection(s) within seven (7) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have ten (10) days from EPA's receipt of the Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

47. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute to the Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. The Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, the Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVI. FORCE MAJEURE

48. The Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of the Respondent, or of any entity controlled by the Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite the Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, increased cost of performance, or a failure to attain performance standards/action levels set forth in the Action Memorandum.

49. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, the Respondent shall notify EPA orally within three (3) days of when the Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, the Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude the Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

50. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force*

majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify the Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify the Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVII. STIPULATED PENALTIES

51. Respondent shall be liable to EPA for stipulated penalties in the amount of \$1,000 per day for each and every failure to comply with the requirements of this Order specified below, unless excused under Section XVI (*Force Majeure*). "Compliance" by the Respondent shall include completion of the activities under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

52. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Branch Chief level or higher, under Paragraph 47 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

53. Following EPA's determination that the Respondent has failed to comply with a requirement of this Order, EPA may give the Respondent written notification of the failure and describe the noncompliance. EPA may send the Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Respondent of a violation.

54. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invoke the dispute resolution procedures under Section XV (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

EPA Superfund
Region 1

P.O. Box 360197M
Pittsburgh, PA 15251

and shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 01BA, the EPA Docket Number for this action, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA to:

Sharon C. Fennelly, Enforcement Coordinator
U.S. Environmental Protection Agency, Region 1
1 Congress Street
Suite 1100, Mail Code HBR
Boston, MA 02114-2023

and

Lee Clouthier, Financial Officer
U.S. Environmental Protection Agency, Region 1
1 Congress Street
Suite 1100, Mail Code MCO
Boston, MA 02114-2023

55. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.

56. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

57. If the Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. The Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 54. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XIX, Paragraph 61. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XVIII. COVENANT NOT TO SUE BY EPA

58. In consideration of the actions that will be performed by the Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against the Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work. This covenant not to sue shall take effect upon the Effective Date. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order, including, but not limited to, completion of the Work. This covenant not to sue extends only to Respondent and does not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

59. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

60. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against the Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by the Respondent to meet a requirement of this Order;
- b. liability for costs incurred or to be incurred by the United States, including but not limited to the costs incurred under this Order;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

61. Work Takeover. In the event EPA determines that the Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. The Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. EPA may seek all costs incurred in performing the Work in a subsequent action. Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANT NOT TO SUE BY RESPONDENT

62. The Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

63. Except as provided in Paragraph 65 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 60 (b), (c), and (e) - (g), but only to the extent that Respondent's claims arises from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

64. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

65. The Respondent agrees not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against

any person where the person's liability to the Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that the Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against the Respondent.

XXI. OTHER CLAIMS

66. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of the Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

67. Except as expressly provided in Section XVIII (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

68. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. CONTRIBUTION PROTECTION

69. The Parties agree that the Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work. Except as provided in Section XX, Paragraph 65 of this Order (De Micromis Waivers), nothing in this Order precludes the United States or the Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XXIII. INDEMNIFICATION

70. The Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, the Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of the Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of the Respondent in carrying out activities pursuant to this Order. Neither the Respondent nor any such contractor shall be considered an agent of the United States.

71. The United States shall give the Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with the Respondent prior to settling such claim.

72. The Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

73. At least 7 days prior to commencing any on-Site work under this Order, the Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one million dollars (\$1,000,000), combined single limit. Within the same time period, the Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Order, the Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of the Respondent in furtherance of this Order. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then the Respondent needs provide only

that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

74. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security in the amount of \$300,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Respondent; or
- e. A demonstration that the Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

75. If the Respondent seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 74(a) of this Section, the Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If the Respondent seek to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 74(d) or (e) of this Section, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, the Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 74 of this Section. The Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

76. If, after the Effective Date, the Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 74 of this Section, the Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. The Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, the Respondent may reduce the amount of the security in accordance with the written decision resolving the dispute.

77. The Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, the Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVI. MODIFICATIONS

78. The OSC may make modifications to any plan or schedule or the Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

79. If the Respondent seeks permission to deviate from any approved work plan or schedule or the Statement of Work, the Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. The Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 78.

80. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXVII. ADDITIONAL REMOVAL ACTION

81. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify the Respondent of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, the Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Order. Upon EPA's approval of the plan pursuant to Section VIII, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modifications).

XXVIII. NOTICE OF COMPLETION OF WORK

82. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including post-removal site controls and record retention, EPA will provide written notice to the Respondent. If EPA determines that any such Work has not

been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that the Respondent modify the Work Plan if appropriate in order to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by the Respondent to implement the approved modified Work Plan shall be a violation of this Order.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

83. If a court issues an order that invalidates any provision of this Order or finds that Respondent have sufficient cause not to comply with one or more provisions of this Order, the Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

84. This Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following appendices are attached to and incorporated into this Order: Appendix A - EPA Action Memorandum; Appendix B - Map of Site; and Appendix C - Statement of Work.

XXX. EFFECTIVE DATE

85. This Order shall be effective three (3) days after the Order is signed by the Director, Office of Site Remediation and Restoration, Region 1 or his/her delegate.

The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind the party he or she represents to this document.

Agreed this 6 day of Aug, 2003.

For Respondent Waterbury Realty, LLC

By Sal Cascina

Title MEMBER

It is so ORDERED and Agreed this 7th day of August, 2003.

for
BY:

[Signature]
Susan Studien, Acting Director

DATE:

8-7-03

Office of Site Remediation & Restoration
Region 1

U.S. Environmental Protection Agency

EFFECTIVE DATE: 8-10-03



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 1
 1 CONGRESS STREET, SUITE 1100
 BOSTON, MASSACHUSETTS 02114-2023

CONTAINS ENFORCEMENT-SENSITIVE INFORMATION

MEMORANDUM

DATE: July 11, 2003

SUBJ: Request for a Removal Action at the EPAC Site,
 Waterbury, New Haven County, Connecticut - **Action Memorandum**

FROM: Frank Gardner, On-Scene Coordinator
 Emergency Response Section

THRU: Steve Novick, Chief
 Site Evaluation and Response Section II

Arthur V. Johnson III, Chief
 Emergency Planning & Response Branch

TO: Susan Studlien, Acting Director
 Office of Site Remediation and Restoration

I. PURPOSE

The purpose of this Action Memorandum (AM) is to request and document approval of a proposed removal action at the EPAC Site (Site). The EPAC facility is located at 730 North Main Street in Waterbury, New Haven County, Connecticut. Friable asbestos and polychlorinated biphenyls (PCBs) are present at the Site, and if not addressed by implementing the response actions selected in this AM, will continue to pose a threat to human health.

II. SITE CONDITIONS AND BACKGROUND

CERCLIS ID# : CTD001454214
SITE ID# : 01BA
CATEGORY : Time Critical

A. Site Description

1. Removal Site Evaluation

On 2 March 2003, an emergency response was conducted by the Connecticut Department of Environmental Protection (CT DEP) in response to an odor and sheen that were observed on Great Brook. The EPAC facility was investigated as the possible source of the sheen. At CT DEP's request, EPA mobilized to the Site on 3 March 2003 to assist with this emergency response. During this response, several conditions were observed that posed a potential threat to public health. Fire debris was suspected to include asbestos-containing material (ACM) and several capacitors and large capacity transformers potentially containing polychlorinated biphenyls (PCBs) were found. Stained soils located at the base of the transformers indicated past occurrence of leakage.

On 3 March 2003, CT DEP requested that EPA conduct a removal site investigation. EPA and the Superfund Technical Assessment and Response Team contractor (START) mobilized to the site on 20 March 2003 to conduct the site investigation. During the investigation, START collected bulk samples (for asbestos) from a boiler unit located in the ruins of the building and other areas of fire debris. Air monitoring was conducted near several drums that indicated elevated levels of organic vapors. The drums, however, could not be safely accessed due to fire debris. Although the capacitors and transformers could not safely be opened during the investigation, stained surface soils beneath the transformers were sampled. Sampling conducted during the investigation confirmed the presence of asbestos on the boiler unit and PCBs in the stained soils beneath the transformers. Based on the findings of the site investigation, a removal action was recommended on 21 April 2003.

2. Physical Location

The Site is located at 730 North Main Street, Waterbury, Connecticut, at coordinates 41° 33' 44" north latitude by 73° 01' 54" west longitude. The Site is bounded by commercial properties to the north, residential properties and the Naugatuck River to the east, residential properties to the south, and residential neighborhood and Martin Luther King Jr. Park to the west.

3. Site Characteristics

EPAC was a tenant at the Great Brook Industrial Park, which is owned by Waterbury Realty, LLC. The industrial park is a multi-section, light manufacturing, industrial-use brick complex located on approximately 11 acres. EPAC operated at one of the buildings at the industrial park until 25 December 2003, at which time a fire destroyed much of the building. The transformers and capacitors are located in an adjacent, partially-intact, two-

story building, which is open to the burned-out remains of the EPAC building on one side. This two-story structure is owned by Waterbury Realty, LLC, but was vacant and not leased to EPAC.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant.

Data collected during the site investigation indicates the presence of asbestos in concentrations up to 12 % on the boiler unit and in nearby building debris and PCBs up to 54 mg/kg in stained surface soils beneath the transformers.

5. NPL status

The site is not currently on the National Priorities List, and has not received a Hazardous Ranking System rating.

B. Other Actions to Date

1. Previous Actions

Pursuant to a request for support from CT DEP, EPA conducted an emergency response on 3 March 2003 to investigate a possible release from the site to Great Brook. This response included investigating the Site for possible source areas that could have contributed to the sheen and odor observed on Great Brook the previous day. Site conditions observed during this emergency response led to the removal site investigation. EPA is also pursuing a pending Toxic Substances Control Act (TSCA) enforcement action at the site regarding the discovery of PCBs. TSCA enforcement activities were ongoing prior to the emergency response.

2. Current Conditions

The burned-out remains of the former EPAC facility are still present. The asbestos, drums, capacitors, and transformers remain, although representatives of Great Brook Industrial Park have covered the asbestos with plastic tarps to temporarily minimize its release. The drums remain commingled with building debris. Access to the site remains unrestricted to foot traffic.

C. State and Local Authorities' Roles

3. Actions to Date

On 2 March 2003, CT DEP conducted an emergency response to investigate the source of a sheen and odor observed on Great Brook. During the reconnaissance of the area to locate the source of the release, CT DEP observed potential hazardous conditions at the EPAC facility that posed a potential threat to the public, leading to the removal site investigation. CT DEP requested assistance from EPA to further evaluate the site.

4. Potential for Continued State/Local Response Role(s)

CTDEP will assist EPA's removal action by providing ARARs and technical support. The Town of Waterbury will assist EPA by providing public health and outreach support.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

A. Threats to Public Health or Welfare

"Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants" [300.415(b)(2)(i)].

The presence of asbestos, PCBs, and drums potentially containing hazardous substances pose a direct contact threat to local residents and those who may enter the Site. Access to the Site is unrestricted, and the burned-out remains of the structure may act as an attractive nuisance, bringing unauthorized individuals in close contact with asbestos-containing building materials, drums, or PCB-contaminated surface soils.

Asbestos fibers may enter the body by inhalation or ingestion. Breathing asbestos can cause asbestosis, a buildup of scar-like tissue in the lungs and in the membrane that surrounds the lungs. Symptoms of asbestosis include shortness of breath, coughing, and sometimes heart enlargement. Asbestosis is a serious disease that can lead to disability or death. Asbestos is also a known human carcinogen. Inhalation of high levels of asbestos can cause cancer of the lung tissue itself and mesothelioma, a cancer of the membrane that surrounds the lung and other internal organs.¹

¹Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services, Public Health Service, *Tox FAQs Fact Sheet for Asbestos*, September 1996.

PCBs are known to cause acne-like lesions and rashes known as chloracne. They may also cause developmental and reproductive problems. PCBs are probable human carcinogens, suspected of causing liver cancer.²

"Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released" [300.415(b)(2)(v)].

The presence of friable asbestos on and around the boiler poses a threat of airborne or waterborne migration. This material is exposed to hot and cold temperatures, precipitation, and wind and constitutes a potential threat to public health. Asbestos can crumble under hand pressure. Exposure to cycles of wetting and drying will hasten degradation, and thereby the potential to be released.

"The availability of other appropriate federal or state response mechanisms to respond to the release" [§300.415(b)(2)(vii)].

CT DEP and the Town of Waterbury have requested that EPA complete this removal action because they do not have the resources to address the site.

B. Threats to the Environment

"Actual or potential contamination of drinking water supplies or sensitive ecosystems" [§300.415(b)(2)(ii)].

Great Brook is identified as a sensitive ecosystem and is used for recreation and fishing. A section of the brook flows directly beneath the property and could be adversely impacted from the migration of contaminants at the Site.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

²ATSDR, U.S. Department of Health and Human Services, Public Health Service, *Toxicological Profile for Polychlorinated Biphenyls*, November 2000.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed action description

The actions required to mitigate the threats outlined herein are given below. At this time, Waterbury Realty, LLC, a Potentially Responsible Party (PRP), has indicated a willingness to perform the work. EPA will pursue a PRP-lead cleanup with this party. In the event the PRP fails to perform adequately, EPA is prepared to undertake the following actions: (a) perform a site walk with the ERRS contractor; (b) collect and remove asbestos-containing materials from the boiler unit and surrounding areas; (c) remove PCB-contaminated oil from the transformers, if present; (d) remove the capacitors and PCB-contaminated surface soils; (e) determine whether hazardous substances are present in the drums (which could not be accessed during the removal site investigation); and (f) transport hazardous substances generated by the above activities to an approved off-site disposal facility.

2. Community Relations

EPA will remain involved with the local community throughout the removal action via press releases, fact sheets, and public meetings, as needed.

3. Contribution to Remedial Performance

Performing this removal action will serve to protect public health and the environment by eliminating the potential for further release of hazardous substances including asbestos and PCBs, found at the Site. The removal action will contribute toward and be consistent with the performance of any remedial action that may be undertaken at a later date.

4. Description of alternative technologies

The use of alternative technologies with regard to disposal options will be further examined as the site work progresses. On-site field screening and analytical techniques will be utilized to the extent practicable.

5. Applicable or Relevant and Appropriate Regulations (ARARs)

The cleanup standards, standards of control, and other substantive requirements that have been identified to-date, are listed below, and are applicable within the confines of EPA Publication 540/P-91/011, "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions."

Federal ARARs:

29 CFR Parts 1910, 1926, and 1904: OSHA Health and Safety Regulations

40 CFR Part 61- National Emission Standards for Hazardous Air Pollutants

Subpart M - National Emission Standard for Asbestos

61.145(c) : Standard for demolition and renovation

61.150 (except d): Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations

61.151 (except d and e); Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations

40 CFR Part 262 - Standards Applicable to Generators of Hazardous Waste:

Subpart B - The Manifest

262.20 : General requirements for manifesting

262.21 : Acquisition of manifests

262.22 : Number of copies of manifests

262.23 : Use of the manifest

Subpart C - Pre-Transport Requirements

262.30 : Packaging

262.31 : Labeling

262.32 : Marking

Subpart D - Recordkeeping and Reporting

262.40 : Recordkeeping

40 CFR Part 264 - Standards for Owners and Operators of Hazardous waste Treatment, Storage, and Disposal Facilities:

Subpart I - Use and Management of Containers

264.171 : Condition of containers

264.172 : Compatibility of waste with containers

264.173 : Management of containers

264.174 : Inspections of containers

264.177 : Special requirements for incompatible wastes

40 CFR Part 264 Hazardous Waste Regulations - RCRA Subtitle C:

268-270 : Hazardous and Solid Waste Amendments Land Disposal Restrictions Rule

40 CFR Part 300.440 Procedures for Planning and Implementing Off-Site Response Actions (Off-Site Rule)

49 CFR Parts 171-179 : Department of Transportation Regulations for Transport of Hazardous Materials

40 CFR Part 761.60 and Parts 761.202-218 : TSCA requirements for disposal of PCBs

State ARARs:

The OSC will coordinate with State officials to identify additional State ARARs, if any. In accordance with the National Contingency Plan and EPA Guidance Documents, the OSC will determine the applicability and practicability of complying with each ARAR which is identified in a timely manner.

6. Project schedule

The total project duration is estimated at four months.

B. Estimated Costs

In the event the PRP fails to perform the removal action, EPA's independent government estimate of the cost associated with carrying out the proposed actions outlined above are given below. If the removal is successfully completed by the PRP, EPA's extramural costs will be limited to \$50,000 START cost.

<u>Regional Removal Allowance Costs</u>	
ERRS ³ Contractor	\$ 300,000
<u>Other Extramural Costs Not Funded from the Regional Allowance</u>	
START Contractor, including multiplier costs	<u>\$ 50,000</u>
Subtotal, Extramural Costs	\$ 350,000
10% Extramural Costs Contingency	<u>\$ 35,000</u>
TOTAL EXTRAMURAL PROJECT CEILING	\$ 385,000

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

In the absence of the response action described herein, conditions at the Site can be expected to continue to deteriorate, and the threats associated with the presence of hazardous substances will persist.

VII. OUTSTANDING POLICY ISSUES

There have been no outstanding policy issues identified to date with respect to this removal action.

VIII. ENFORCEMENT

See attached Enforcement Strategy.

³Emergency Rapid Response Services

A. Fund-lead Scenario

The total estimated EPA costs for the fund-lead scenario would be:

$\$385,000$ (extramural costs) + $\$75,000$ (EPA's direct intramural costs) = $\$460,000$

$\$460,000 \times 1.2702$ (regional indirect rate) = $\$584,292$

The total EPA costs for this fund-lead removal action based on full-cost accounting practices that will be eligible for costs recovery are estimated to be $\$584,292$.⁴

B. PRP-lead Scenario

The total estimated EPA costs for the PRP-lead scenario would be:

$\$50,000$ (extramural costs) + $\$75,000$ (EPA's direct intramural costs) = $\$125,000$

$\$125,000 \times 1.2702$ (regional indirect rate) = $\$158,775$

The total EPA costs for the PRP-lead removal action based on full-cost accounting practices that will be eligible for costs recovery are estimated to be $\$158,775$.

IX. RECOMMENDATION

This decision document represents the selected removal action for the EPAC Site in Waterbury, Connecticut, developed in accordance with CERCLA as amended, and not inconsistent with the National Contingency Plan. The basis for this decision will be documented in the administrative record to be established for the Site.

Conditions as the Site meet the NCP Section 300.415 (b) (2) criteria for a removal action due to the following:

4

Direct Costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimate indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgement interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants [§300.415(b)(2)(i)];

Actual or potential contamination of drinking water supplies or sensitive ecosystems [§300.415(b)(2)(ii)];

Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; [§300.415(b)(2)(v)]; and

The availability of other appropriate Federal or State response mechanisms to respond to the release; [§300.415(b)(2)(vii)].

I recommend that you approve the proposed removal action. The total removal action project ceiling, if approved, will be \$385,000. Of this, an estimated \$300,000 comes from the Regional removal allowance.

APPROVAL: _____

DATE: _____

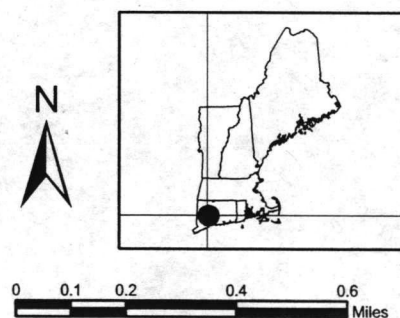
DISAPPROVAL: _____

DATE: _____



EPAC Site Waterbury, CT

- EPAC Site
 - === Limited access highway
 - == Secondary highway
 - Local thoroughfare
 - Local road
 - County Boundary
 - Town Boundary
 - ▨ Wellhead Protection Area
 - Surface Water
 - Swamp/Marsh
 - Open Space
 - Surface Hydrography
- People Per Square Mile**
- 0
 - < 100
 - 101 - 1000
 - 1001 - 2500
 - 2501 - 5000
 - > 5000



EPA
New England

Albers Equal-Area Projection

April 29, 2003
US EPA - New England GIS Center
c:/shortterm/epac/epac3.mxd

APPENDIX C

STATEMENT OF WORK

EPAC Site

Waterbury, Connecticut

Pursuant to the

Administrative Order for Removal Action

Docket No. 01-2003-0060

I. INTRODUCTION

This scope of work ("SOW") identifies the components of work required pursuant to the Administrative Order on Consent ("AOC") for Removal Action (Docket No.01-2003-0060). Under this SOW, Respondent shall prepare and submit to EPA the items identified below. Respondent shall implement or submit each item under EPA approval. The removal action conducted under this Administrative Order and SOW shall abate the potential danger to public health or welfare or the environment which may otherwise result from the actual or threatened release of hazardous substances at or from the EPAC Site in Waterbury, Connecticut ("Site").

- A. This scope of work requires the cleanup of polychlorinated biphenyls (PCBs) in electrical capacitors and transformers and contaminated surface soils, asbestos-containing material (ACM) on the boiler unit and in building debris, and other hazardous substances which may be present in drums and containers at the Site.
- B. Respondent shall establish and maintain physical access to the Site for personnel, equipment, and supplies, including EPA and EPA's contractors and representatives.
- C. Respondent shall communicate freely with the On-Scene Coordinator (OSC) prior to and during development of plans and deliverables, and continually throughout implementation of approved plans. Open and routine communication will result in the most effective and efficient cleanup.
- D. All actions taken by Respondent shall not be inconsistent with the National Contingency Plan (NCP), found in Title 40, Part 300 of the Code of Federal Regulations (40 CFR 300).
- E. Each required deliverable generated pursuant to the requirements in Part II A below must be approved by the OSC prior to implementation.
- F. The OSC may require Respondent to alter or expand upon plans after approval, based on new information, changed Site conditions, or subsequently identified deficiencies.
- G. By telephone or otherwise, Respondent shall inform the OSC of any field activity not less than five work days prior to the event.

In conducting all activities under this SOW, Respondent shall:

- H. Comply with Section 300.150 of the NCP, which references the standards promulgated by the Occupational Safety and Health Administration (Hazardous Waste Operations and Emergency Response, 29 C.F.R. 1910.120), including development and implementation of a health and safety program. This program shall include the steps that will be taken to protect on-site workers and the general public from hazards associated with any open excavations, hazardous substances brought to the surface during site

activities, or any other hazards associated with on-site activities.

I. Provide the OSC, upon request, all quality assurance/quality control procedures followed by the supervising contractor and their laboratory(s) pertaining to all sampling and analytical work performed pursuant to this Order.

II. WORK TASKS

A. **WITHIN THE TIME FRAME ESTABLISHED IN THE AOC:**

Respondent shall submit to EPA for approval, a work plan for immediate removal of PCBs, ACM, and any other hazardous substances from the Site that shall address the following applicable criteria as found in **Section 300.415 (b)(2)** of the NCP:

Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants [§300.415(b)(2)(i)];

Actual or potential contamination of drinking water supplies or sensitive ecosystems [§300.415(b)(2)(ii)]; and

Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; [§300.415(b)(2)(v)].

The work plan submitted for EPA approval shall include:

1. Collection and removal of ACM from the boiler unit and surrounding areas of fire debris;
2. Removal of PCB-contaminated oil from the transformers, if present;
3. Removal of the capacitors and PCB-contaminated surface soils;
4. Characterization of drums and containers to determine whether hazardous substances are present in the drums (which could not be accessed during the removal site investigation);
5. Off-site disposal of all ACM, PCBs, and any hazardous substances generated by the above activities;
6. Identification of and a plan to meet soil cleanup levels including the Connecticut Remediation Standards Regulators (RSRs) and any other applicable or relevant and appropriate requirements (ARARs) ;
7. Description of how soil remaining in place will be sampled to assure that the cleanup levels are being met;

8. Description of how ACM will be identified, collected, and contained;
9. Identification of any subcontractors which may be involved in asbestos cleanup activities (asbestos cleanup contractors must be licensed by the State of Connecticut);
10. Description of how electrical capacitors containing PCBs will be collected and secured;
11. Description of how electrical transformers will be identified, sampled, and assessed as to whether they contain PCB-contaminated oils, and, if so, how such oils will be collected and secured and how the transformers will be decontaminated and/or disposed;
12. Description of how drums and other containers will be recovered, sampled, characterized, and assessed as to whether they contain hazardous substances;
13. Description of how all waste streams involving hazardous substances will be packaged, staged, and prepared for disposal;
14. Odor and dust control measures;
15. Air monitoring/sampling plan that will be protective of on-site personnel and the surrounding community;
16. Type of equipment to be used;
17. The name of the laboratory that will be used to analyze any samples collected and the EPA standard method to be used for the analysis (maximum 2 week turnaround time on sample analysis);
18. The name, address, and RCRA identification number of the proposed disposal facility(s);
19. A detailed project time line which provides time frames associated with each activity stated in plan.

B. WITHIN 20 DAYS OF EPA APPROVAL OF THE WORK PLAN:

Respondent shall implement the approved work plan in accordance with the schedule as detailed in the work plan.